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STEVEN G. BRADBURY

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August 26, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Flat Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, EB Docket No. 15-147, File No. EB15-MD-005

Dear Ms. Dortch:

I am enclosing for filing in the above captioned proceeding the Supplemental Answer to Paragraph 50a of Flat's Amended Complaint, Supplemental Response of Verizon to Interrogatory No. 5 of Flat Wireless, which has been redacted for public inspection, and Supplemental Declarations in this proceeding.

Sincerely,



Steven G. Bradbury

SGB
Enclosures

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Exhibit A

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
)

Flat Wireless, LLC, for and on behalf)
of its Operating Subsidiaries,)
)

EB Docket No. 15-147
File No. EB-15-MD-005

Complainant,)
)
)

v.)
)
)

Cellco Partnership d/b/a Verizon Wireless,)
and its Operating Subsidiaries,)
)

Defendant.)
_____))

SUPPLEMENTAL ANSWER OF VERIZON

Verizon hereby provides the following Supplemental Answer to Paragraph 50a of the Amended Complaint of Flat Wireless ("Flat") in this proceeding:

50a. Defendant denies that it has caused Flat to suffer monetary damages or has engaged in any unlawful conduct that could give rise to damages.

Respectfully submitted,



Christopher M. Miller
Tamara L. Preiss
Andre J. Lachance
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1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 515-2400

Steven G. Bradbury
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(202) 261-3483

Counsel for Verizon

August 26, 2016

Exhibit B

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August 26, 2016

HIGHLY CONFIDENTIAL MATERIAL ENCLOSED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ATTN: Rosemary McEnery
Deputy Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Flat Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, EB Docket No. 15-147, File No. EB15-MD-005, Verizon Supplemental Response and Request for Highly Confidential Treatment

Dear Ms. Dortch:

I am enclosing for filing in the above captioned proceeding the Supplemental Response of Verizon to Interrogatory No. 5 of Flat Wireless. Verizon hereby requests highly confidential treatment of the interrogatory response provided with the attached filing pursuant to the protective order adopted by the Enforcement Bureau,¹ and sections 0.457(d)(2), 0.457(g)(3), 0.459 and 1.731 of the Commission's Rules, 47 C.F.R. §§ 0.457(d)(2), 0.457(g)(3), 0.459 and 1.731. Accordingly, these materials may be used and disclosed solely in accordance with the limitations and procedures of 47 C.F.R. §§ 1.731(b)-(e).

The documents and information for which Verizon seeks highly confidential treatment fall squarely within the requirements of Section 0.459 of the Commission's

¹ Protective Order, EB Docket No. 15-147, File No. EB-15-MD-005 (Aug. 31, 2015).

rules, and disclosure of this information would result in competitive harm to Verizon. In support of this request, Verizon provides the following information pursuant to Sections 0.457(d)(2) and 0.459(b) of the Commission's Rules.

1. Extent of Nondisclosure Requested. Verizon is requesting highly confidential treatment for all documents marked as "Highly Confidential" as well as information designated "[**BEGIN HIGHLY CONFIDENTIAL**]" and "[**END HIGHLY CONFIDENTIAL**]," in the Supplemental Response and the associated Declarations. The documents and information subject to this request generally relate to commercial negotiations and arrangements between Verizon and Flat Wireless, LLC, Inc. ("Flat" or "Complainant"), and to commercial arrangements between Verizon and other entities, that are subject to non-disclosure agreements or that Verizon does not otherwise disclose publicly.
2. Proceeding/Reason for Submission. Verizon is submitting the enclosed information pursuant to Sections 1.724 and 1.729 of the Rules, 47 C.F.R. §§ 1.724, 1.729, and in accordance with the Enforcement Bureau's July 15, 2015 letter to Verizon and Flat, the Enforcement Bureau's September 2, 2015 grant of the parties' Joint Motion to Revise Scheduling Order, the August 11, 2016 Conference of the parties and Enforcement Bureau, and the parties' as part of Verizon's Supplemental Response to Flat's formal complaint in the above-referenced proceeding.
3. Nature of Highly Confidential Information. The information contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitter has a commercial interest in them." *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978). The information is clearly

“commercial”² in nature. It includes information relating to Verizon’s roaming pricing and agreements, wholesale relationships, Verizon’s business practices and methods, and commercially sensitive and highly confidential agreements with Defendant and other parties. Further, the documents are plainly “highly confidential” in that they “would customarily not be released to the public.”³ Courts have elaborated that material “is ‘confidential’ . . . if disclosure of the information is likely to have *either* of the following effects: (1) to impair the government’s ability to obtain necessary information in the future; *or* (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”⁴ Both of these considerations plainly apply in this instance, as further explained in point (5) below.

4. Competitiveness of Market. The commercial information provided derives from and relates to Verizon’s provision of mobile wireless services and thus concerns a service “that is subject to competition,” 47 C.F.R. § 0.459(b)(4). *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 28 FCC Rcd 3700 (2013).
5. Harm from Disclosure. The commercial information in the enclosed response is highly confidential because its release would likely cause competitive harm to Verizon. The information is clearly commercial in nature. Further, the documents are plainly “highly confidential” in

² *See Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms “commercial” and “financial,” as used in Section 552(b)(4), their ordinary meanings).

³ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

⁴ *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted) (emphasis added); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

that they “would customarily not be released to the public.”⁵ Further, evidence revealing “[a]ctual competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”⁶ The Commission has recognized that disclosure of information relating to pricing, costs, business practices and methods and related information to competitors can cause competitive harm, and is thus competitively sensitive and subject to Exemption 4.⁷

6. Measures Taken to Prevent Unauthorized Disclosure. Verizon treats the documents and information subject to this request as highly confidential and subject to non-disclosure agreements, and does not publicly disclose this information. Verizon also limits the internal circulation of this information to only those with a need-to-know.
7. Public Availability and Previous Disclosure to Third Parties. The documents for which highly confidentiality is sought are not made available to the public and have not been disclosed to parties other than Flat. Documents disclosed to Flat have been subject to non-disclosure agreements.
8. Requested Duration of Nondisclosure. The enclosed information should never be released for public inspection, as it contains commercially sensitive, highly confidential information, the release of which could adversely affect Verizon’s competitive position.

⁵ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993) (citing the Senate Committee Report).

⁶ *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

⁷ See, e.g., *Josh Wein, Warren Communications News, Request for Inspection of Records*, Memorandum Opinion and Order, 24 FCC Rcd 12347, 12352-53 (2009).

For the foregoing reasons, Verizon respectfully requests that the Commission withhold these documents and information from public inspection, subject to the safeguards of section 1.731 of the Rules.

Should you need additional information with regard to this request, please contact the undersigned at (202) 261-3483.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven G. Bradbury". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven G. Bradbury

SGB
Enclosures

Exhibit C

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

Defendant.

[illegible]

EB Docket No. 15-147
File No. EB-15-MD-005

Flat's amended Interrogatory No. 5 seeks, for the most current 12 months, "the lowest retail and wholesale (including MVNO) rates offered by [Verizon] whether or not accepted by a customer or MVNO, for the Service Categories" at issue, and the interrogatory specifies that this request is to include "all rates which are still active on the [Verizon] network but are no longer

REDACTED FOR PUBLIC INSPECTION

offered to new customers.”¹ In the Supplement to Joint Statement, the parties have referred to such rates as “grandfathered rates.”²

For retail wireless rates, Verizon has no currently effective plans with rates for the voice, toll, or text service categories that Verizon considers to be “lower” than rates for the “unlimited” plans identified in Verizon’s previous response.³ For the data service category, Verizon does continue to have some retail customers on “unlimited” data plans, though Verizon no longer offers such data plans to new customers.

For MVNOs, it is unclear how the “grandfathered rate” concept would be applied. However, Verizon does not have “grandfathered rates” that are “lower” than those Verizon previously disclosed or is disclosing here. However, Verizon does have wholesale rates that could be considered “lower” than those specified in Verizon’s previous response. Specifically, Verizon’s lowest wholesale rates for voice, toll, SMS, and data services are available only to MVNO resellers willing and able (1) to make [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

¹ See Interrogatory No. 5, Amended Interrogatories of Flat Wireless, LLC (filed Sept. 1, 2015).

² See Supplement to Joint Statement of Flat and Verizon (filed Feb. 5, 2016).

³ See Verizon Answer at Tab F, Response to Flat's Interrogatories (filed Sept. 15, 2015).

REDACTED FOR PUBLIC INSPECTION

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

Under these conditions, the lowest rates are as follows:

Bulk Rate Plans

Voice/Toll rate: [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED] [END HIGHLY CONFIDENTIAL]

SMS rate: [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED] [END HIGHLY CONFIDENTIAL]

MMS (multi-media message) rate: [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED] [END HIGHLY CONFIDENTIAL]

Data rate: [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED] [END HIGHLY CONFIDENTIAL]

Data overage rate: [BEGIN HIGHLY CONFIDENTIAL]
[REDACTED] [END HIGHLY CONFIDENTIAL]

REDACTED FOR PUBLIC INSPECTION

It should be noted that bundled pricing plans are now available to resellers willing and able [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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REDACTED FOR PUBLIC INSPECTION

[REDACTED]

[END HIGHLY CONFIDENTIAL]

It is possible that in some circumstances the bundled pricing plan as described above would reflect the “lowest” wholesale rate for one or more of the service categories of voice, data, or SMS/MMS. However, without utilization information, we are not able to determine whether this rate plan has the lowest effective rate per MOU, MB, or Message.

[BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL]

Respectfully submitted,



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Counsel for Verizon

August 26, 2016

Exhibit D

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)

Flat Wireless, LLC, for and on behalf)
of its Operating Subsidiaries,)

Complainant,)

v.)

Cellco Partnership d/b/a Verizon Wireless,)
and its Operating Subsidiaries,)

Defendant.)

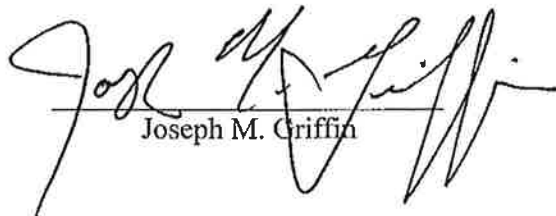
EB Docket No. 15-147
File No. EB-15-MD-005

SUPPLEMENTAL DECLARATION OF JOSEPH M. GRIFFIN

1. My name is Joseph M. Griffin, and I am employed by Verizon. My responsibilities include developing and maintaining Verizon's consumer retail wireless plans.
2. The purpose of my declaration is to provide additional information as part of Verizon's response to Interrogatory No. 5 of Flat Wireless LLC in this matter.
3. I have reviewed the retail information provided in Verizon's Supplemental Response to Flat's Interrogatory No. 5 and declare that the information is true and correct based on information available to me.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 26, 2016



Joseph M. Griffin

)	
In the Matter of)	
)	
Flat Wireless, L.L.C., for and on behalf)	EB Docket No. 15-147
of its Operating Subsidiaries,)	File No. EB-15-MD-005
)	
Complainant,)	
)	
v.)	
)	
Cellco Partnership d/b/a Verizon Wireless,)	
and its Operating Subsidiaries,)	
)	
Defendant)	
)	

1. My name is Donald H. Manley, and I am employed by Verizon. My responsibilities include negotiating and maintaining Verizon's wholesale and MVNO agreements.
2. The purpose of my declaration is to provide additional information as part of Verizon's response to Interrogatory No. 5 of Flat Wireless, LLC in this matter.
3. I have reviewed the wholesale (MVNO) information provided in Verizon's Supplemental Response to Flat's Interrogatory No. 5 and declare that the information is true and correct based on information available to me.

Dated: August 26, 2016

Donald H. Manley

Exhibit E

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2016 copies of the foregoing filing and declarations attached hereto were delivered by courier and electronic mail to the following individual:

Donald J. Evans
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street,
Suite 1100
Arlington, VA 22209



Hrishikesh N. Hari